IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.814 OF 1996

Hemant Krishnanath Wadke
R/o 276, Guruchhaya building,
Parvatigaon, Pune-411 009. ....Appellant

V/s.

1. M/s.Patheja Forging & Auto
Parts Manufacturing Co.Pvt.Ltd.
39, A.V.P. Road, Opp.Congress
House Bombay, and E20, MIDC
Estate, Bhosari, Pune-411 026.

2. Niyamtuall Gani Kazi,
R/o Pankar Chawl, Kasarwadi
Pune and C/o Respondent No.1.

3. New India Assurance Co.Ltd.,
Nehru Memorial Hall, 3rd Floor,
Ambedkar Road, Pune-411 001. ....Respondents

Mr.G.S. Hegde for the Appellant.

Mr.M.G. Barve for Respondent No.3.

**CORAM : S. RADHAKRISHNAN &**
**S.J. VAZIFDAR, JJ.**
**DATED : 16TH SEPTEMBER, 2004.**

**ORAL JUDGMENT (PER S.J. VAZIFDAR, J.) :**

1. This is an Appeal against the judgment of the Additional Member, Motor Accident Claims Tribunal

ordering the Respondents to pay only a part of the amount claimed by the Appellant in his Claim Application No.125 of 1984, filed under the Motor Vehicles Act.

2. Niyamatuall Gani Kazi - Respondent No.2 was the driver of the vehicle owned by Respondent No.1. Respondent No.3 is the New India Assurance Co.Ltd. with whom the said vehicle was insured.

3. The Appellant claimed various amounts from the Respondents on account of the injuries sustained by him as a result of rash and negligent driving by Respondent No.2. Mr.Hegde has restricted his submissions to only three major claims.

. The learned Judge came to the conclusion that Respondent No.2 was guilty of rash and negligent driving. The learned Judge, however, did not award the entire amount claimed on various grounds which we shall deal with in the judgment. In respect of the claim for loss of income and for loss of future earnings, the learned Judge allowed only fifty percent of the claim on the ground that the Appellant was guilty of contributory negligence.

4. It would therefore be convenient to deal with the Appeal under the following heads :-

I). The accident.

II). Whether the Appellant was guilty of contributory negligence.

III). Injuries sustained by the Appellant and the medical treatment for the same.

IV). Claims.

. The Respondents have neither filed an Appeal nor cross objections against the impugned judgment.

**RE. : THE ACCIDENT**

5. We will first set out the Appellant's case. The Appellant's case is that he was twenty six years old when the accident occurred. He is married and has a son, who at the time of the accident, was only a year old. On 7th September, 1983, the Appellant was proceeding on his scooter bearing registration No. MXP-1904 on the Mumbai - Pune Highway. He was riding the scooter with due care and caution and by observing

the traffic rules and regulations. Around the site of the accident, the Appellant saw a truck proceeding from the opposite direction and took his scooter to the extreme left. However, a Fiat car bearing registration No. MRH-8593 driven by Respondent No.2 and owned by Respondent No.1 came from behind the truck at a very high speed and was driven in a rash and negligent manner. While overtaking the truck, the car was driven on the wrong side of the road and collided with the scooter. The Appellant was seriously injured and became unconscious on the spot. We shall deal with the nature and extent of the injuries suffered by the Appellant later.

6. The Appellant examined himself. In his evidence, he stated that he was driving the scooter at about 20 to 25 k.m.p.h. He further stated that the car came from behind the truck and when it had almost overtaken the truck it collided with him. The handle of the scooter was broken. The Appellant was tossed up and fell on the bonnet of the car. He thereafter fell down and was dragged for a distance of about 30 to 40 ft. The Appellant estimated the speed of the car at about 70 to 80 k.m.p.h. The Appellant further stated that he was on the correct side of the road at the time of the accident.

7. The cross-examination of the Appellant did not shake his testimony at all. There was a mere suggestion that the Appellant was driving fast, as he was in a hurry to reach his workshop, as he was late. There is nothing to suggest that the Appellant was late. Nor is there anything to suggest that he was in a hurry to get to his workshop. Much less is there anything to suggest that the Appellant was driving fast.

. It is important to note at this stage that a specific case was put to the Appellant that he dashed against the truck. As we shall demonstrate shortly this case was false and contrary to the Respondents' case in the pleadings.

. It was further put to the Appellant that he was driving in the middle of the road. He denied the same.

8. Apart from the above, the cross-examiner has merely put the case to the Appellant that he falsely stated that the car was driven at a speed of about 70 to 80 k.m.p.h. and that in fact the car was being driven only at about 30 to 40 k.m.p.h.

9. The panch witness, who was examined by the Appellant, deposed that the car was on the wrong side of the road - a fact which is firmly established. He further deposed that the road was 40 ft. wide and that at the spot of the accident there was about 8 to 9 ft. of tar road and 5 to 6 ft. of "kaccha" road to the left of the Appellant. He further stated that to the left of the accident spot was a workshop. The scooter was at a distance of about 150 ft. from the spot of the accident in the direction opposite to the one in which the Appellant was travelling. There were blood stains and two pieces of the Appellant's bones at the accident spot. The car itself was at a distance of about 30 to 40 ft. from the spot of the accident in the same direction in which it was proceeding. There were brake marks of the car for about 30 to 40 feet. The cross-examination of this witness brought nothing in favour of the Respondents. On the other hand, it supports the Appellant's case. It establishes the fault of Respondent No.2 to the hilt.

10. The effect of the above evidence is that admittedly the car was being driven by Respondent No.2 on the wrong side of the road and that when the accident occurred, the car was on the wrong side of the road and the Appellant was on the correct side of the

road. Even before us, this fact was not seriously sought to be controverted.

11. To reiterate, the evidence does not destroy the Appellant's case at all. We are entirely in agreement with the learned Judge in so far as he has held that there was negligence on the part of Respondent No.2 and that Respondent No.2 drove the car rashly and negligently, as a result whereof the accident occurred.

12. The learned Judge however came to the conclusion that the appellant was guilty of contributory negligence. The learned Judge further held that though Respondent No.2 had not entered the witness box, there was clear evidence which showed the manner in which the accident occurred. He therefore held that there was no question of drawing any adverse inference against the Respondents. We are, with respect, unable to agree with the entire reasoning of the learned Judge on this aspect.

13. The learned Judge held that the statement in the examination-in-chief that the Appellant was thrown on the bonnet of the car and was dragged upto the distance of about 30 to 40 ft. was an after-thought, because the same was not stated in the application.

14. Firstly, we do not see why merely because this fact was not stated in the Application it is an after-thought and cannot be believed. It must be remembered that the Application was filed while the Appellant was still in hospital. Secondly, we do not see how in the facts and circumstances of the case, it would make any difference to the claim by the Appellant stating this fact. Nothing has been suggested either before the learned Judge or in the cross-examination which would justify the conclusion that the statement was an after-thought.

15. The learned Judge also held that this statement is falsified by the evidence of the panch witness. The evidence of the panch witness does not falsify the same in any manner. We have been through the entire evidence of the panch witness'. The learned Judge does not state which part of his panch witness' evidence falsifies this case. Mr.Barve, the learned counsel appearing on behalf of Respondent No.3, did not indicate anything in the evidence of the panch witness which falsifies the case. We have been unable to find anything to this effect either. In the cross-examination, no reasons have been attributed or suggested for the same. The learned Judge, relying

upon the panch witness' evidence, has held that it is obviously improbable that blood and pieces of bone would happen to lie at the place of the accident, if in fact the Appellant was thrown on the bonnet of the car and dragged to the distance of about 30 to 40 ft. He therefore held that the Appellant exaggerated the facts.

16. With great respect to the learned Judge, we are unable to agree with the entire line of reasoning. We do not see why it logically follows that blood cannot be found splattered at the accident spot merely because the victim, after being hit by the speeding car, fell on the bonnet and was dragged. There is every possibility that on impact blood could have splattered immediately and thereafter the body dragged on the road. There is absolutely no evidence which justified such a conclusion.

17. As we have observed earlier the Respondents led no evidence whatsoever. They neither examined themselves nor any other witness. In the facts of this case, we see no reason to disbelieve the Appellant's case. We are reinforced in this view after examining the Respondent's case. The learned Judge has categorically held that the car while overtaking the

truck had gone on the wrong side of the road and accordingly held that Respondent No.2 was guilty of rash and negligent driving. We are entirely in agreement with this finding of the learned Judge.

. **RE. : CONTRIBUTORY NEGLIGENCE**

18. This brings us to the question of whether the Appellant was guilty of contributory negligence. We have observed earlier that the learned Judge has held that Respondent no.2 was guilty of rash and negligent driving, and that when he overtook the truck and caused the accident the car was on the wrong side of the road and the Appellant was on the correct side of the road. Despite this, the learned Judge held the Appellant guilty of contributory negligence.

19. It would be convenient at this stage to refer to the relevant provisions of the Motor Vehicles Act, 1939. The accident occurred in 1982. The application in which the impugned judgment was passed was filed under section 110-A of the 1939 Act.

20. Section 78(1) of the Motor Vehicles Act, 1939 reads as under :-

> "78 (1) Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by (a mandatory traffic sign) and in conformity with the driving regulations set forth in the Tenth Schedule, and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place. (emphasis supplied)

Regulations 1, 2, and 4 of The Tenth Schedule read as under :-

> "1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow the traffic which is proceeding in the opposite direction to pass him on his right hand side.
>
> 2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.
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> .....
>
> 4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself -
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> (a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or
>
> (b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible."

21. Section 217 (1) (a) of the 1988 Act saves the regulations made under the 1939 Act. Sections 217 (1) and (2) (a) read as under :-

> **"217. Repeal and saving :** (1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereafter in this section referred to as the repealed enactments) are hereby repealed.
>
> (2) Notwithstanding the repeal by sub-section (1) of the repealed enactments, -
>
> (a) any notification, rule, regulation, order or notice issued,or any appointment or declaration made or exemption granted,or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made; granted, done or taken under the corresponding provision of this Act; (emphasis supplied)

22. The learned Judge however disallowed a part of the claim inter-alia on the ground that the Appellant was guilty of contributory negligence. Negligence on the part of the Respondents has been

proved and if we may add, beyond doubt. We are not at all sure whether the principle of contributory negligence applies in a case such as this where the Respondent is on the wrong side of the road driving rashly and negligently and the Claimant is on the correct side of the road, to wit, where the Respondent is in breach of the law and the Claimant is not. As in the facts of this case it is not necessary to decide this point, we refrain from doing so. We shall proceed on the basis that the principle is applicable.

23. However, even assuming that the principle of contributory negligence applies to a case, such as this, the onus of proving contributory negligence is on the party alleging the same - in this case, the Respondents. To hold otherwise would not only be contrary to the principles of onus of proof but would put a premium on rash and negligent drivers and drivers who flout the rules and regulations under the Motor Vehicles Act.

24. We are unable to appreciate the basis on which the Appellant has been held guilty of contributory negligence. According to us, the Respondents have failed miserably to prove any contributory negligence on the part of the Appellant.

The Respondents have led no evidence to show how according to them the accident occurred. It was for the Respondents to prove that the Appellant could have avoided the accident. Before considering what the Respondents failed to prove and the impugned judgment on this aspect, it is important to consider the Respondent's case in pleading and in the cross-examination of the Appellant on behalf of the Respondents. As we shall demonstrate, the Respondents have pleaded not merely contradictory, but three patently false cases with a view to depriving the Appellant of compensation.

25. The first case of the Respondents is to be found in the written statement filed on behalf of Respondent No.1 (and adopted by Respondent No.2 i.e. the driver of the vehicle) it is alleged that the accident was caused wholly because of the negligence of the Appellant, who was not going on the correct side of the road. This case is ex-facie false. The Appellant was on the correct side of the road and Respondent No.2 was on the wrong side of the road. The basis of this defence is therefore false. The falsity of this case is exposed by the averment in the earlier paragraph where Respondent No.1 stated that the Appellant "was not keeping to his correct extreme

left side of the road, but was proceeding almost near to the centre of the road". It is not their case here that the Appellant was on the wrong side of the road.

. Further, Respondent No.1 alleged that the Appellant thus could not control his scooter and collided with the car. No evidence to this effect has been produced.

. The statement in the written statement that the Appellant "came rashly from the opposite direction" while Respondent No.2 was overtaking the truck has also not been proved. No evidence to this effect has been produced.

26 (a). The second case of the Respondents appears in the written statement of Respondent No.3. Mr.Barve, the learned counsel appearing on behalf of Respondent No.3 i.e. New India Assurance Co. Ltd stated that the written statement of Respondent No.3 was prepared on the basis of the instructions received from Respondent Nos.1 and 2. It is important to note here that Respondent Nos.1 and 2 deliberately gave false instructions and information to Respondent No.3. Respondent No.3 in its written statement has come out with a totally contradictory and false case which is

best exposed by extracting paragraph 2 of the written statement which reads as under :-

> "2. That this Opponent denies the occurrence of the alleged accident as narrated by the Applicant in para-22 of the claim application and also the negligence on the part of Opponent No.2. The Applicant is called upon to prove his contentions strictly. According to the information this Opponent, on the material date i.e. on 7.9.1983, Opponent No.2 was cautiously proceeding on Bombay Poona Road in the SAME direction as that of the Applicant. The Applicant who was driving his scooter in the excessive speed overtook the car driven by the Opponent No.2 and after going some distance stopped his Scooter suddenly. On seeing the Scooter stop suddenly ahead of him Opponent No.2 in order to avoid any impact swerved his car to his right, while he was so doing, he noticed one loaded truck coming in speed from the opposite direction. In order to avoid collision with the on - coming truck, the Opponent No.2 had to take his car back to its original position. In doing so the car hit the scooterist who had negligently stopped his scooter without proper signal and suddenly without taking into consideration the traffic then plying on the road.
>
> . From the facts stated above it will be crystal clear that the accident was caused by the applicant. Further, the applicant in order to brand the Opponent No.2 as negligent has concealed the fact of his having earlier overtaken the car." (emphasis supplied)

(b). The following contradictory and false statements appear above -

- that Respondent No.2 and the Appellant were proceeding in the "SAME" direction,

- that the Appellant overtook the said car,

- that the Appellant after going some distance stopped his scooter suddenly,

- that Respondent No.2 in order to avoid any impact swerved his car to the right and while doing so, noticed the said truck,

- that the truck was coming from the opposite direction and

- that in order to avoid collision with the on coming truck, Respondent No.2 had to take his car back to its original position.

27. The Respondents came up with a third contrary and patently false case during the evidence. In cross-examination, the case put to the Appellant by the Respondents was that the Appellant dashed against

the truck.

28. Mr.Barve did not even attempt to establish these contradictory cases. He could not. Nor did he contend that the cases are contradictory and mutually destructive of each other. They quite clearly are.

29. We are constrained to state that the Respondents have pleaded false cases and have committed perjury. They appear to have little regard for the truth, much less concern for the harm and injury caused to the Appellant and his family. As a result thereof, the Appellant has been made to suffer this long and needless litigation for 22 years now. Respondent No.3 filed its written statement on 31st October, 1984. Respondent No.1 filed its written statement on 10th December, 1984. This written statement was adopted by Respondent No.2. Either Respondent No.3 on its own filed a patently dishonest written statement or it did so, as stated by Mr.Barve, on the instructions of Respondent Nos.1 and 2. That the written statement filed by Respondent Nos.3 is deliberately false and constitutes perjury is clear. The only question is whether Respondent No.3 did so on its own or whether it was pursuant to such instructions from Respondent Nos.1 and 2. Either way

this certainly has contributed to a large extent to the failure on the part of the Appellant in recovering a substantial part of the compensation and in having his already pitiable condition aggravated for twenty two years during the pendency of this litigation.

30. This conduct of the Respondents makes it difficult to accept their case on facts.

31. The learned Judge held the Appellant guilty of contributory negligence on the basis that there was allegedly 8 to 9 ft. of tar road and 5 to 6 ft. "kaccha" road on the left of the Appellant which would have enabled him to avoid the accident by moving to the left. The learned Judge has held that it was not the case that the car had suddenly come on the wrong side of the road to overtake the truck when the accident occurred.

32. We are unable to understand how the learned Judge could have proceeded on this basis when there was no evidence to substantiate the same. The onus being clearly on the Respondents to prove contributory negligence it was incumbent on them to prove at the least that the Appellant had time to react and move to his left and that there was no obstruction to the

left. These facts were not even pleaded, far less proved. The evidence in fact establishes that to the left there was also a shop. Had a case of contributory negligence been pleaded and sought to be proved the Appellant would have had an opportunity of dealing with the same. There is no evidence that at the time of the accident the road to the left was clear of obstruction and traffic. There is no evidence that the Appellant had enough time to react. It is not the Respondents' case that the Appellant was, when Respondent No.2 started overtaking, on the left and that he thereafter moved to the right. Nor do the Respondents say that Respondent No.2 was taken by surprise when he saw the Appellant. This is important for it establishes that what the Respondents in effect say is this : 'Yes, Respondent No.2 was on the wrong side of the road when overtaking. Yes the Appellant was on the correct side of the road at that time. Nevertheless the Appellant was bound to permit Respondent No.2 to illegally overtake the truck.' Even if we were to accept this rather unpalatable attitude to constitute in law a defence of contributory negligence, we find there is no evidence to support the same on facts.

33. It is further important to note that the

learned Judge has completely failed to consider the fact that the Respondents have pleaded not only contradictory cases but completely false cases and are in fact guilty of perjury.

34. In the circumstances, we overrule the judgment in so far as it is held that the Appellant was guilty of contributory negligence.

35. There is one other aspect on this point. Even if we were to assume that the Appellant was guilty of contributory negligence, in the facts of this case it can hardly be said that the Appellant was equally to blame. The learned Judge has held the Appellant to be disentitled to 50 per cent of his claim on the basis that he was equally to blame. The Appellant had not violated any rule or regulation in any manner. He was neither speeding nor on the wrong side of the road. Respondent No.2 on the other hand was clearly driving in violation of the regulations. In these circumstances surely the Appellant cannot be held equally guilty and be deprived of 50 per cent of his claim. Thus the deduction of 50 per cent of the Appellant’s claim is in any view of the matter unjustified.

. **RE. : INJURIES SUSTAINED BY THE APPELLANT**

36. The application for compensation was filed on 5th March, 1984, while the Appellant was still undergoing medical treatment for his injuries. The application was amended by pleading the subsequent facts and enhancing the claim from Rs.4,15,000/- to Rs. 12,00,000/-. The application for amendment was rightly allowed. It has not been challenged before us.

37. The accident occurred on 7th September, 1983 between 2.00 to 2.30 p.m. Initially it was found that both legs of the Appellant and his thigh were fractured. They were, therefore, placed in a plaster. When the application was filed, the Appellant was completely bedridden. He had by then undergone several surgeries and was aware that he had to undergo further medical treatment including surgery. He could not sit or walk at all. He suffered from gas - gangrene for which he had to undergo treatment in Mumbai. He was unable to look after himself or meet his daily requirements on his own. He required an attendant for the same round the clock. Steel rods and nails were fitted inside his legs.

38. The Appellant underwent extensive medical treatment including major surgeries between 7th September, 1983 to 7th February, 1985 i.e. for seventeen months as an indoor patient at various hospitals. He sustained, among others, the following injuries :-

i) compound communited (shattered) fracture shaft femur (R)

ii) compound fracture Tibia-Fibula (R)

iii) closed fracture tibia

iv) Multiple C.L.W. (Contuse Lacerated Wound) over face and

v) head injuries

39. The treatment that the Appellant underwent was lengthy, painful and traumatic to say the least. Even the brief description we shall now give is sufficient to comprehend the enormous pain and suffering, both physical and mental, that the Appellant must have undergone. The Appellant was initially treated at the Sancheti Hospital, Pune. As

he suffered from gas - gangrene, he was referred by the Sancheti Hospital to the K.E.M. Hospital (Government Hospital) at Mumbai. The Medical Officer of the K.E.M. Hospital in turn referred the Appellant to the Bombay Port Trust Hospital in Mumbai only for treatment of gas - gangrene. The particulars of this treatment have been annexed to the claim. It is, however, unnecessary for us to set them out herein. Suffice it to state that he underwent treatment for gas-gangrene from 19th September, 1983 to 1st October, 1983. The seriousness of contracting gas - gangrene needs no emphasis. It often leads to amputation as in the Appellant's case. In view of the claims Mr.Hegde has restricted himself to before us, it is also unnecessary for us to give the details of the periods during which the Appellant had to be attended to by special doctors, nurses and attendants. Suffice it to state here again that his condition was so poor and serious that special assistance was required throughout.

40. The Appellant's left leg was placed in plaster that extended upto his waist. The right leg was placed in plaster upto his knee. An external fixator was also applied to his right leg from the knee upto his waist. His legs were kept in plaster

upto October, 1983. On 10th October, 1983, the Appellant underwent an extremely painful procedure of skin grafting. On 8th December, 1983 the Appellant underwent another operation involving nailing of the tibia of the left leg. On the same day, a hip spica was done. It involves the placement of plaster from the toe upto the rib cage. The patient with hip spica must lie in bed at all times. The hip spica was continued for six months. Needless to add that these operations were under general anaesthesia. On 21st June, 1984, an open reduction and nailing of the right femur was done also under general anaesthesia at Sancheti Hospital. On 7th July, 1984, another operation was performed and the nail was removed from the Appellant's right femur.

41. On 19th January, 1985, the Appellant's right leg from above the knee was amputated.

42. As a result of the accident, the Appellant also suffered several injuries including injuries to his right eye, his nose and multiple C.L.W. over his face. The C.L.Ws. were serious and led to a partial disfigurement of his face. His tongue was injured which has impaired his speech. Due to the injuries sustained on his head, his hearing is also slightly

impaired.

43. On 7th February, 1985, i.e. seventeen months after initial hospitalisation, the Appellant was discharged. However, even thereafter, the Appellant had to undergo continuous treatment for several months under careful supervision.

44. We believe that with the above narration, nothing more is required to emphasise the seriousness and gravity of the injuries sustained and the extent of the pain and suffering that the Appellant had undergone. Any suggestion to the contrary must be rejected and be regarded as having been made in extremely poor taste.

**RE. CLAIM**

45. The Appellant established that he had suffered 80% permanent disability.

46(a). The Appellant claimed that his net income was Rs.2000/- per month from his business. He further claimed that as a result of the injuries sustained by him, he was unable to carry on the said business. The Appellant produced evidence which established that his

income was Rs.62,576/- in the year 1982-83 and Rs.52,742/- in the year 1983-84. The learned Judge however assessed his net income at only 20% of the said amount on the basis that his expenses for employing a servant, purchasing material and miscellaneous expenses such as for electricity would constitute 80% of his gross receipts.

46(b). We are unable to agree with the learned Judge. In cross-examination, the Appellant was not asked any questions in this regard. Indeed his income as per the evidence comes to between Rs.4500/- and Rs.5000/- per month. The Appellant, we find, has honestly stated his net income to be only Rs.2000/- per month. We are unable to understand on what basis the learned Judge has come to the conclusion that 80% of this income was used to meet the expenses of his business. This was not the Respondents' case in the evidence. In his examination-in-chief, the Appellant has given considerable details regarding his income and his business. It is pertinent to note that the Appellant owned two three-wheeler tempos, which he used for delivering his products. Surely he could not have purchased these vehicles from an income of Rs.1100/- per month as assessed by the learned Judge.

46(c). We are, therefore, unable to accept the learned Judge's conclusion that the monthly income of the Appellant was only Rs.1100/-. We hold that his income was at least Rs.2000/- per month.

47(a). The learned Judge further deducted 50% of the Appellant's income assessed by him at Rs.1100/- per month on the basis that though the Appellant has suffered 80% permanent disability, there was no reason to accept his version that total loss of income is suffered as the Appellant has not made any effort to do any work. The learned Judge thus assessed the income of the Appellant at Rs.550/- per month i.e. 50% of Rs.1100/-.

47(b). Once again, there is no cogent evidence which persuades us to uphold these findings. The cross-examination of the Appellant does not establish the same. On what basis must the Appellant be deprived of 50% of his claim in this regard ? We find none. We therefore disagree with the learned Judge in this regard and maintain his income at Rs.2000/- per month without deducting 50% from the same.

47(c). To the income so assessed at Rs.1100/- per month the learned Judge added a sum of Rs.250/- on the

basis that the Appellant would have prospered in his business had he not met with the accident. We are in agreement with the approach adopted by the learned Judge in assessing his income at a higher rate than his actual income on the finding that had he not met with an accident, his business would have prospered. The addition of Rs.250/- to Rs.550/- constitutes an addition of 45%. This approach of the learned Judge has not been challenged by the Respondents. We therefore maintain the increment of 45%.

48. In the circumstances, we hold that the income of the Appellant was Rs.2000/- per month. The addition of 45% thereto would bring the multiplicand to Rs.2900/- per month.

49. The learned Judge has applied a multiplier of 18 to which there has been no objection by any of the parties.

50. In the circumstances, we hold that the Appellant would be entitled to a sum of Rs.2900/- (income per month) x 12 (months) x 18 (per year) multiplier i.e. to Rs.6,26,400/-.

51. The Learned Judge has on the aforesaid basis

adopted by him, assessed the loss of income during the Appellant's seventeen months of hospitalisation at Rs.18,700/-. However, for these seventeen months, we do not intend adding to the income of Rs.2000/- a component of 45%. In the circumstances, the loss of income for seventeen months is determined at Rs.34,000/-.

52. In respect of the aforesaid claims for future loss of earning and for loss of income for seventeen months, the learned Judge has awarded a sum of Rs.1,72,800/- and Rs.18,700/- respectively. The amount awarded in the impugned judgment in respect of these two claims stands enhanced to Rs.6,60,400/- (Rs.6,26,400/- + Rs.34,000/-)

53. The Appellant has claimed a sum of Rs.1,50,000/- as general damages on account of mental and physical suffering, a sum of Rs.1,50,000/- on account of loss of enjoyment of amenities in life, a sum of Rs.50,000/- on account of loss of expectation of life on account of injuries sustained by him, affecting his longevity and an amount of Rs.50,000/- on account of inconvenience, hardship, disappointment, frustration etc.

54. The learned Judge, however, in respect of the aforesaid claims, granted a sum of only Rs.1,00,000/-. The learned Judge held that for pain and suffering, no distinction could be made between persons but that a difference ought to be made when considering the loss of amenities in life. He therefore declined to grant compensation at the rate awarded by the Supreme Court in *R.D. Hattangadi versus Pest Control (India) Pvt.Ltd. and others, (1995) 1 Supreme Court Cases 551.* In this case, the Supreme Court held as under :-

> "12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.
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> 13. The Court in the case of *C.K. Subramonia Iyer v. T. Kunhikuttan Nair* in connection with the Fatal Accidents Act has observed :
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> > "In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable".
>
> 14. In Halsbury's Laws of England, 4th Edn.,Vol. 12 regarding non-pecuniary loss at page 446 it has been said :

"Non-pecuniary loss : the pattern.- Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.

The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

.....

17. The claim under Sl.No.16 for pain and suffering and for loss of amenities of life under Sl.No.17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the

> award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been croppled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for pain and suffering and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000 (Rupees three lakhs only) against the claim of Rs.6,00,000 under the heads "Pain and Suffering" and "Loss of amenities of life"."

55. In *Nagappa v. Gurudayal Singh & others, (2003), 2 Supreme Court Cases 274*, the Supreme Court held that there was no restriction that compensation could be awarded only upto the amount claimed by the claimant and that in an appropriate case where from the evidence brought on record after the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo, it was held, is that the compensation should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. In paragraph 12, the Supreme Court held as under :-

> "12. This Court in *Sheikhupura Transport Co. Ltd. v. Northern India Transport Insurance Co.*

observed as under : (SCC p. 788, paras 6-7)

> "The pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.
>
> The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error."

56. There are several factors in the present case that justify awarding atleast the amounts claimed by the Appellant for the pain and suffering experienced by him and for the loss of amenities of life suffered by him. At the time of the accident, the Appellant was only 26 years old. He had an entire life to look forward to. To make matters worse, he had a young wife and a one year old child. The accident, apart from everything else, deprived him of one of the most cherished joys of life - to bring up the child and to spend a normal life with his child. The Appellant was hospitalised for 17 months. During the course of hospitalisation, he went through several major surgeries before his leg was amputated. He went through several other medical/surgical procedures as

well. We have absolutely no doubt that the pain and suffering were both mental and physical. We have no doubt that the entire experience must have been extremely traumatic for the Appellant and his family. Even after he was discharged, the Appellant had to undergo medical treatment. He would probably have to do so for the rest of his life. How then under these circumstances can anybody state that the claim for Rs.3,00,000/- is either fanciful, arbitrary or unjustifiable. We totally reject Mr.Barve's submission that an award in this sum would constitute a "windfall" for the Appellant.

57. Mr.Barve relied on a judgment of a learned single Judge of the Rajasthan High Court in *Vishnu Veer alias Bhola v. Hari Kishan and others, 2000 ACJ 21*. In that case, the claimant's right leg was amputated as a result of the injuries suffered by him due to the rash and negligent driving of a car. The learned Judge awarded a sum of Rs.1,00,000/- as non-pecuniary damages for pain and suffering and loss of amenities of life.

. We do not read this judgment as having held that in all circumstances where the claimant's leg is amputated, the claim must be limited to Rs.1,00,000/-.

It would depend upon various facts and circumstances.

58. Mr.Barve also relied upon another judgment of the same learned single Judge of the Rajasthan High Court in *Devidass Rao Deshmukh v. Rajasthan State Road Trans.Corpn., 1997 ACJ 618.* In this case, both the legs of the Claimant had been amputated and there was 100% permanent disablement of the lower limbs. We do not see how the judgment is of any assistance to Mr.Barve. As we have already observed compensation for pain and suffering and loss of amenities of life will depend upon a variety of circumstances. Moreover, in that case, the learned Judge awarded a sum of Rs.1,00,000/- each for physical and mental agony, permanent disability and loss of social life.

59. Lastly, Mr.Barve relied upon a judgment of the Himachal Pradesh High Court in *Pyar Chand v. Himachal Pradesh Road Transport Corporation and another, 2003 ACJ 1249*. This judgment is also of little assistance to the Respondents' case. In that case also, the claimant had undergone extensive medical treatment. He suffered 70% disability and shortening of his right leg by about 3 inches. However, the extent of the medical treatment and the extent of injuries was far less than what the

Appellant before us has suffered. It is pertinent to note that even in these facts and circumstances, a sum of Rs.1,50,000/- was awarded on account of pain and suffering alone. This case in fact justifies the claim of the Appellant of the present case.

60. In the circumstances, for pain and suffering and loss of amenities of leg, we award a sum of Rs.3,00,000/-.

61. Mr.Barve then submitted that the rate of interest awarded by the learned Judge at 12% p.a. should be reduced to 4.5% p.a. He founded this submission on the basis that according to him the current rate of interest on fixed deposits paid by nationalised banks is 4.5% p.a. To accept this submission would be a travesty of justice.

62. The rate of 12% p.a. was a conservative rate in 1982-83 when the accident occurred and on 4.11.1995 when the judgment was delivered. The litigation has been prolonged inter-alia on account of a totally dishonest defence raised by the Respondents. The Appellant would have been entitled to the above amounts when the accident occurred. It would be grossly unfair to deprive a victim of an accident,

especially in such circumstances, to the rate of interest which he would have been entitled to at the time of the accident.

63. Firstly, the Respondents have not challenged this rate of interest either by filing an appeal or cross objections. We however, shall presume that they are entitled to do so before us. Secondly, there is no evidence whatsoever produced by the Respondents to establish the present rate of interest.

64. Mr.Barve cited a judgment of the Supreme Court in *Kaushnuma Begum and others versus New India Assurance Co.Ltd. & Ors., 2001 ACJ 428*, in respect of his submission that the rate of interest ought to be the present rate of interest paid by nationalised banks on fixed deposits. The Supreme Court held as under :-

> "23. Now, we have to fix up the rate of interest, Section 171 of the M.V. Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12 per cent was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are

> now granting interest at the rate of 9 per cent or fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 per cent per annum from the date of the claim made by the appellants. The amount of Rs.50,000/- paid by the insurance company under section 140 shall be deducted from the principal amount as on the date of its payment and interest shall be recalculated on the balance amount of the principal sum from such date".

65. The reliance upon the judgment is unfounded. We are unable to read the aforesaid judgment of the Supreme Court as an absolute rule in all the cases to the effect that the rate of interest under Section 171 of the Motor Vehicles Act can only be that which is granted by nationalised banks on fixed deposits at the time of the final judgment. Indeed the Supreme Court itself has so held in *Arati Bezbaruah versus Dy.Director General, Geological Survey of India, 2003 ACJ 680.* The Supreme Court held thus :-

> "18. Three decisions were cited before us by Mr.A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and

reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income,loss of enjoyment of life, etc. into consideration. No rate of interest is fixed under section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Apex Court. Interest can be granted even if claimant does not specifically plead for the same as it is consequential in the eyes of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of money which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to nature of provision under section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile saga and doctrine of equity. Neither section 34, Civil Procedure Code nor section 4-A (3) of Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard and fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above."

66. In our view, in fact, a rate of interest of 15% p.a. atleast ought to have been granted by the learned Judge in view of the fact that, as stated by Mr.Barve himself, in 1983, the rate of interest was 15% p.a. We however do not intend altering the rate of 12% p.a. awarded in the impugned judgment, as the same was not specifically challenged before us. We are of the opinion that there is absolutely nothing whatsoever made out for reducing the rate of interest of 12% p.a. awarded by the learned Judge. The case has been pending before us for 22 years. The injuries suffered by the Appellant were extensive and painful. The medical treatment that the Appellant had to undergo was traumatic lengthy and extremely painful. The injuries sustained by the Appellant including the amputation of a leg are grave. The Appellant has been deprived in not merely monetary terms. He is deprived the facility of enjoying a normal life with his one year old child. To reduce the rate of interest even by a fraction would be dealing yet another cruel blow to the already unfortunate life of the Appellant.

67. In the circumstances, the amount awarded in the impugned judgment shall stand enhanced to

Rs.9,60,400/-. In the circumstances, the Respondents shall pay to the Appellant an amount of Rs.9,60,400/- together with interest therein at the rate of 12% p.a. from 5th March, 1984 i.e. the date of the application till payment.

. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar/Court Stenographer of this Court.

(S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.814 OF 1996

**DATE OF DECISION : 16TH SEPTEMBER, 2004**.

For Approval and Signature :

**HON'BLE MR.JUSTICE S. RADHAKRISHNAN**.

**HON'BLE MR.JUSTICE S.J. VAZIFDAR**.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?

2. To be referred to be Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices ?